

### **REMARKS**

In the August 2, 2010 Final Office Action, the Examiner rejected claims 1, 2, 4, and 6 under 35 U.S.C. § 103(a) and being unpatentable over U.S. Patent Publication No. 2002/0128052 to Neagley et al ("Neagley") in view of Potentials, IEEE Volume 18, Issue 4, Oct-Nov 1999, pages 29-33 ("NPL"), and rejected claims 7 and 8 as being unpatentable over U.S. Patent No. 6,509,836 to Ingram "Ingram" in view of NPL, further in view of U.S. Patent No. 4,499,594 to Lewinter "Lewinter" and further in view of Neagley. .

#### **Rejection under 35 U.S.C. § 103(a)**

The Examiner rejects claims 1, 2, 4, and 6 under 35 U.S.C. § 103(a) as being allegedly unpatentable over the combination of Neagley and NPL. Office Action at 8. The Examiner rejects claims 7 and 8 under 35 U.S.C. § 103(a) as being allegedly unpatentable over the combination of Ingram, NPL, Lewinter, and Neagley. Office Action at 12. Applicant respectfully traverses for at least the following reasons.

With respect to obviousness, several basic factual inquiries must be made in order to determine the obviousness or non-obviousness of claims under 35 U.S.C. § 103. These factual inquiries, set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966), require the Examiner to:

- (1) Determine the scope and content of prior art;
- (2) Ascertain the differences between the prior art and the claims in issue;
- (3) Resolve the level of ordinary skill in the pertinent art; and
- (4) Evaluate evidence of secondary considerations.

The obviousness or non-obviousness of the claimed invention is then evaluated in view of the results of these inquiries. *Graham*, 383 U.S. at 17-18, 148 U.S.P.Q. at 467; *see also KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1730, 82 U.S.P.Q.2d 1385, 1388 (2007).

Indeed, to establish a *prima facie* case of obviousness, the examiner must:

make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to

determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention.

M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). "The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." *Id.* It is important to note, moreover, that the prior art references relied upon in a rejection "must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention," when such reasons are articulated by the Examiner. *Graham*, 383 U.S. at 17, 148 U.S.P.Q. at 467; *See also* M.P.E.P. § 2141.03(VI) (emphasis added).

Applicant respectfully submits that such reasons are not present in the rejection of record at least because the references relied upon by the Examiner, when considered as a whole, do not show all of the claimed limitations, nor do they provide any reason that would have prompted a person of ordinary skill in the art to modify and combine the references in the manner suggested by the Examiner.

In response to applicant's previous arguments that the references fail to show certain features of applicant's invention, the Examiner states that "the features upon which applicant relies a BPSK modulation and BPSK signal is placed upon a subcarrier are not recited in the rejected claims." Office Action at 6. While Applicant believes that the previous claim encompass these limitations for the purposes of expediting prosecution Applicant proposes to amend the claims to more specifically claim the above-identified features. Applicant proposes to amend claims 1 and 7 to add "switching the phase of the return signal between two reflection states" and to amend claims 2 and 8 to add the following limitation: "a subcarrier, wherein the subcarrier is created by switching the impedance between two reflective states."

As discussed below, the cited references do not show switching between two reflection states or a subcarrier. The modulation proposed in the pending claims switches between to maximum reflectivity states, 1) an "open" (very high impedance – near infinity) and 2) a "short" (very low impedance – near zero). These two states reflect the phase of the impinging electromagnetic field in two different ways. An "open" circuit termination will cause a 180 degree phase shift in the reflected signal. A "short" circuit termination will maintain the same phase orientation as the impinging

electromagnetic field. This phase changing property is used to form the binary alphabet. This form of modulation is Binary Phase shift keying (BPSK), where the phase of the return signal is switching between two anti-polar phases. BPSK modulation requires 3 dB less in power level than FSK modulation to demodulate and is also superior to OOK. BPSK modulation needs the least signal-to-noise ratio for demodulation than the other two forms of modulations discussed in previous work. It is not obvious to one of ordinary skill in the art how to implement BPSK modulation for a modulated reflector.

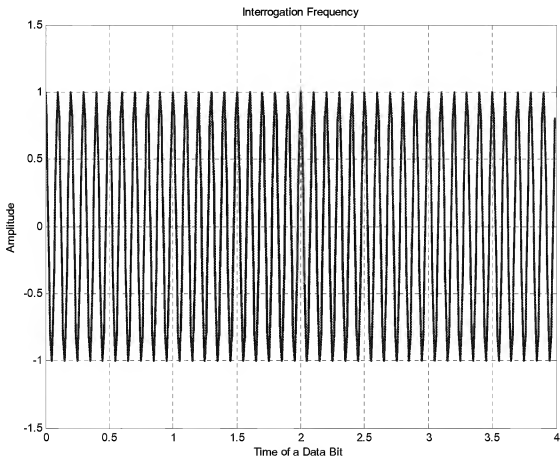
In addition, as defined in the pending claims, the BPSK signal is placed upon a subcarrier. The subcarrier is created by switching the impedance between the two highly reflective states of different phase return. Figure 3 of the pending application shows the method to create the subcarrier BPSK signal using a square-wave generator and multiplying the square-wave signal against a bipolar data stream. This results in a square wave at a single frequency that may or may not change phase for M cycles. Thus M cycles of the square wave maybe in one phase and the next M cycles could be at the same or different phase. A single cycle of a square wave will cause numerous cycle of the interrogating electromagnetic wave to be reflected first in one phase and then 180 degrees opposite in phase. The phase transitions marks a single cycle of square wave. If the phase transition does not occur at a time corresponding to one square wave cycle, then the phase of the square wave was changed and the binary symbol has changed.

The subcarrier BPSK signal allows for multiple uses of the modulated reflector technology. First a signal transmitter/receiver would be able to interrogate multiple modulated reflectors given that each modulated reflector had a different subcarrier frequency. Furthermore, by using code division multiplexing, modulated reflectors with the same subcarrier frequency can be separated.

Ingram discusses modulation control and that Code Division Multiplexing can be used but does not discuss how to achieve phase modulation with a modulated reflector. The diagram, Figure 2A, in the document depicts a reflective and absorptive modulation for the impedance. The discussed "open" and "closed" states refer to the switch used to

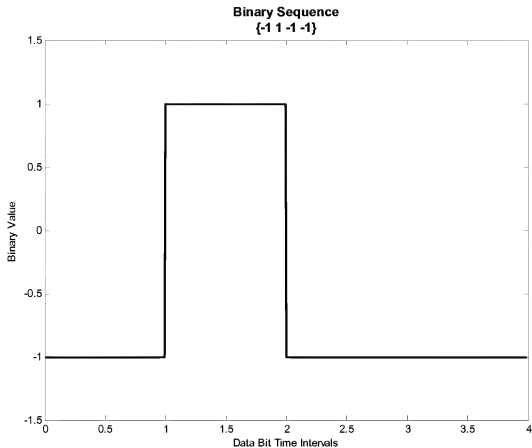
modulate the reflectance and not the "open" and "short" circuits of the modulated reflector impedance.

To further illustrate the arguments above, an example is shown. The three plots below depict the generation of a modulated reflective wave using BPSK modulation. Figure 1 illustrates the interrogation wave that impinges upon the modulated reflector. The interrogating wave is a sinusoidal carrier of a single frequency. The frequency of the interrogating wave is higher than that of the data rate.



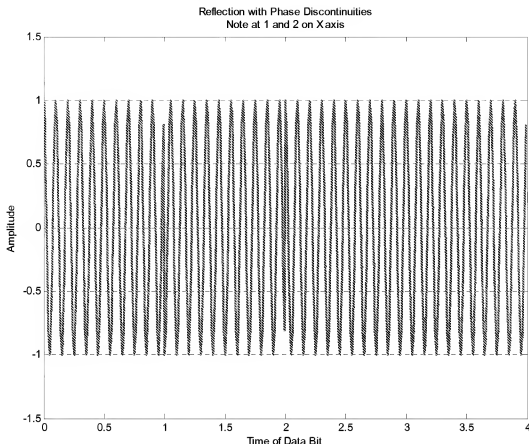
**Figure 1: Interrogation Waveform**

The data is composed of a binary number sequence. Below in Figure 2 is a representation of this binary number sequence.



**Figure 2: Binary Number Sequence**

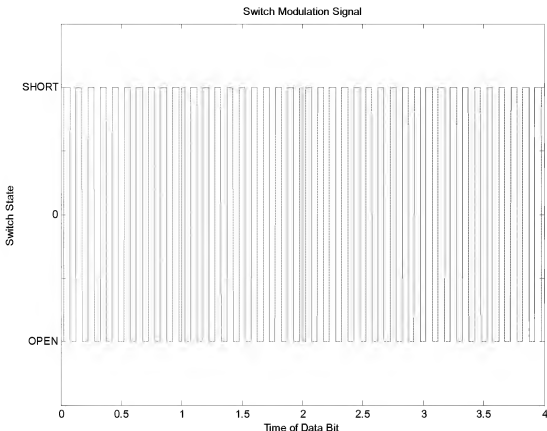
If the binary sequence is used to modulate just the interrogating frequency of the modulated reflector then the reflector switches between the two maximum reflectivity states, open and short, in accordance to the binary sequence value. Figure 3 illustrates the reflected waveform with the interrogation frequency possessing a BPSK modulation.



**Figure 3: Interrogation frequency BPSK modulated**

However, this limits the interrogator part of the system only retrieving information from one modulated reflector. By switching between the two states a subcarrier can be added to the reflected waveform. It is desirable to have subcarriers because multiple modulated reflectors can be illuminated by a single interrogator/information receiver yielding multiple information streams being conveyed to the interrogator/information receiver.

As claimed in the pending application, the subcarriers can be BPSK modulated. It is desirable to have the subcarriers modulated with BPSK, rather than FSK because of the improvement in signal-to-noise ratio. The method that BPSK modulation imparts on the subcarriers is by changing the phase of the switch that imparts the subcarrier. This is shown in Figure 4 below. The phase transitions can be seen at Symbol times 1 and 2.



**Figure 4: PBSK Modulation**

Dependent claims 3 and 6 depend from independent claims 1 and 4 respectively and therefore, are allowable for at least the reasons discussed above and in view of their additional recitations of novel subject matter.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims in condition for allowance. Applicant submits that the proposed amendments to claims 1, 4, 7, and 8 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were earlier claimed in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's

invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The final Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the final Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 12-2150.

Respectfully submitted,

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